IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17537 of 2007
With
CIVIL APPLICATION No. 10936 of 2007
In
SPECIAL CIVIL APPLICATION No. 17537 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANTHUBHA KHANAJI VAGHELA
Versus
STATE OF GUJARAT AND OTHERS

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Appearance :
MR HR PRAJAPATI for the Petitioner
Mr Neeraj Soni, Assistant Government Pleader for the respondents

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 17/09/2007

ORAL JUDGMENT

The petitioner has challenged order dated 8.10.2003 passed by respondent No.3 whereby the licence as well as authorisation granted in favour of the petitioner to run fair price shop have been cancelled with immediate effect. The petitioner has also challenged the order requiring the forfeiture of Rs.5,000/-, which was placed with respondents as deposit.

The petitioner was allotted fair-price shop in the year 1986 and he was granted licence as well as authorisation to run the shop. During the period 20.2.2003 and 22.02.2003 certain irregularities were noticed and therefore show-cause notice dated 20.09.2003 was issued to the petitioner. The petitioner was called upon to show-cause on three items, namely, (1) why the authorisation to run the fair-price shop should not be suspended/cancelled, (2) why the deposit should not be forfeited, and (3) why the criminal complaint under incidental provisions of law should not be filed against him. The petitioner submitted his reply dated 7.10.2003 to the respondent no.3 containing the explanations with regard to the irregularities found during the inspection. Thereafter, respondent No.3 passed the order dated 8.10.2003 cancelling the licence as well as authorisation with immediate effect. It was challenged before the appellate authority i.e. respondent No.2, but the same was also dismissed by order dated 1.1.2004. Against the same, the petitioner preferred revision application before respondent No.1, which was dismissed by order dated 10.1.2005. Hence, this petition.

I have heard Mr H.R.Prajapati, learned advocate for the petitioner and Mr Neeraj Soni, learned AGP for the respondents. Mr Prajapati has advanced submission to the effect that there is inherent defect in the proceedings initiated against the petitioner and the resultant orders. He

has submitted that while issuing the notice respondent No.3 has called upon the petitioner to submit explanation to only three items of the show-cause notice as stated herein above. There is no notice given for the cancellation of the licence. He, therefore, submitted that the mandatory provisions have not been complied with and therefore the proceedings are required to be quashed and set aside. As against that, Mr Neeraj Soni supported the impugned orders and has vehemently submitted that serious irregularities have been found by the authority they are within their bounds to cancel the licence as well as authorisation. According to him, the fair-price shop is meant for the benefit of the lower strata of the society and the petitioner has cheated them. Hence, no lenient view is required to be taken. He has, therefore, submitted that the petition be dismissed.

I have carefully perused the record of the petition. I have also considered the submissions of the learned advocates. Section 8 of the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981 provides for cancellation of licence for contravention of order or condition of licence, which reads as under:-

> "8. Suspension or cancellation for contravention of Order or conditions of licence. -- (1) No holder of a licence issued under this order or his agent or servant or any other person acting on his behalf shall contravene any of the terms and conditions of a licence issued to him and if any such licence holder or his agent or servant or any person acting on his behalf contravenes any of the terms or conditions then, without prejudice to any other action that maybe taken against him his licence may be cancelled or suspended with regard to one or more essential articles by an order of the licensing authority in writing:

Provided that no order shall be made by the licensing authority under this clause unless the licence holder has been given a reasonable opportunity of stating his case to that authority against the proposed cancellation or suspension not being suspension referred to in the sub-clause (2) during the proceeding for cancellation of a licence.

(2) When the licensing authority is prima facie satisfied that there is a case for cancellation of the licence it may supsend the licence for a period not exceeding 90 days during which period the authority shall consider and finally decide."

The impugned notice has been perused by me. Nowhere it speaks of the cancellation of licence. In other words, the petitioner has not been called upon to show-cause as to why his licence should not be cancelled. Thus, the notice as envisaged under proviso to subsection (1) of Section 8 has not been complied with. This is the requirement prescribed under the Act and hence it is mandatory in nature, more so, because it relates to the observance of the principles of natural justice and if that is not complied with, the entire proceedings initiated in contravention of the mandatory provisions get vitiated. In the instant case, precisely the same thing has happened. Since no notice for cancellation of licence under subsection (1) of Section 8 is served upon the petitioner, respondent No.3 has committed a breach of the mandatory requirement. Hence, the notice and the resultant proceedings and orders passed by the respondents get vitiated. They are, therefore, required to be quashed and set aside and they are hereby quashed and set aside. If the authority so wishes it can issue fresh notice in this behalf and take appropriate decision. The petition is therefore allowed with no order as to costs.

In view of the order passed in the main matter, Civil Application No.10936 of 2007 does not survive and the same is disposed of accordingly.

(Akshay H Mehta, J.)

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